

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[55 FR 11134, Mar. 27, 1990, as amended at 58 FR 54486, Oct. 22, 1993]

§§ 1940.592–1940.600 [Reserved]

EXHIBITS TO SUBPART L

EXHIBIT A TO SUBPART L [RESERVED]

EXHIBIT B TO SUBPART L—SECTION 515 NONPROFIT SET ASIDE (NPSA)

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990 established the statutory authority for the section 515 NPSA funds.

III. *Eligible entities.* Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. An eligible entity may include a partnership, including a limited partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. For the purposes of this exhibit, a nonprofit entity is an organization that:

A. Will own an interest in a project to be financed under this section and will materially participate in the development and the operations of the project; and

B. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986; and

C. Has among its purposes the planning, development, or management of low-income housing or community development projects; and

D. Is not affiliated with or controlled by a for-profit organization; and

E. May be a consumer cooperative, Indian tribe or tribal housing authority.

IV. *Nondiscrimination.* FmHA or its successor agency under Public Law 103-354 re-emphasizes the nondiscrimination in use and occupancy, and location requirements of

§ 1944.215 of subpart E of part 1944 of this chapter.

V. *Amount of Set Aside.* See Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office):

A. *Small State Allocation Set Aside (SSASA).* The allocation for small States has been reserved and combined to form the SSASA, as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The definition of small State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

B. *Large State Allocation Set Aside (LSASA).* The allocation for large States has been reserved in the amounts shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The definition of large State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

C. *NPSA Rental Assistance (RA).* NPSA RA has been reserved in the National Office as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

VI. *Access to NPSA funds and RA.* RA is available and may be requested, as needed, with eligible loan requests. NPSA funds and RA should be requested by the State Director using a format similar to Attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Funds are available as follows:

A. *SSASA:* The SSASA is available to any SSASA State on a first-come-first-served basis until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) for information regarding pooling.

B. *LSASA:* LSASA states may request LSASA funds up to the amount the state contributed to LSASA until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) for information regarding pooling.

VII. *General Information on priority/processing of Preapplications.*

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of subpart E of part 1944 of this chapter.

B. A separate processing list will be maintained for NPSA loan requests.

C. The State Director may issue Form AD-622, "Notice of Preapplication Review Action", requesting a formal application to the highest ranking preapplication(s) from eligible nonprofit entities defined in paragraph III of this exhibit as follows:

1. *LSASA*. In LSASA States, AD-622s may not exceed 150 percent of the amount the State contributed to the LSASA. No single Form AD-622 may exceed the amount of funds the State contributed to LSASA.

2. *SSASA*. In SSASA States, AD-622s should not exceed the greater of \$750,000 or 150 percent of the amount the State contributed to the SSASA; except that the State Director in a SSASA State may request authorization to issue a Form AD-622, in an amount in excess of \$750,000 if additional funds are necessary to finance an average-size proposal based upon average construction costs in the state. For example, if the average size proposal currently being funded in the state is 24 units, and the average construction cost in the state is \$35,000 per unit, the state may request authorization to issue an AD-622 for \$840,000. The State Director will submit such requests to the National Office including data reflecting average size/cost projects in the State. No single Form AD-622 may exceed the amount of funds the State may receive from SSASA.

D. All AD-622s issued for proposals to be funded from NPSA will be subject to the availability of NPSA funds. Form AD-622 should contain the following or similar language: "This Form AD-622 is issued subject to the availability of Nonprofit Set-Aside (NPSA) funds."

E. If a preapplication requesting NPSA funds has sufficient priority points to compete with non-NPSA loan requests based upon the District or State allocation (as applicable), the preapplication will be maintained on both the NPSA and non-NPSA rating/ranking lists.

F. Provisions for providing preference to loan requests from nonprofits is contained in §1944.231 of subpart E of part 1944 of this chapter. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

VIII. *Exception authority*. The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or Rural Rental Housing program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and

maximum fund usage from NPSA, or restrict participation in the set aside.

[58 FR 38950, July 21, 1993]

EXHIBIT C TO SUBPART L—HOUSING IN UNDERSERVED AREAS

I. Objective

A. To improve the quality of affordable housing by targeting funds under Rural Housing Targeting Set Aside (RHTSA) to designated areas that have extremely high concentrations of poverty and substandard housing and have severe, unmet rural housing needs.

B. To provide for the eligibility of certain colonias for rural housing funds.

II. Background

The Cranston-Gonzalez National Affordable Housing Act of 1990 (herein referred to as the "Act") requires that Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 set aside section 502, 504, 514, 515, and 524 funds for assistance in targeted, underserved areas. An appropriate amount of section 521 new construction rental assistance (RA) is set aside for use with section 514 and 515 loan programs. Under the Act, certain colonias are now eligible for FmHA or its successor agency under Public Law 103-354 housing assistance.

III. Colonias

A. Colonia is defined as any identifiable community that:

1. Is in the State of Arizona, California, New Mexico or Texas;
2. Is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1 million;
3. Is designated by the State or county in which it is located as a colonia;
4. Is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and
5. Was in existence and generally recognized as a colonia before November 28, 1990.

B. Requests for housing assistance in colonias have priority as follows:

1. When the State did not obligate its allocation in one or more of its housing programs during the previous 2 fiscal years (FYs), priority will be given to requests for assistance, in the affected program(s), from regularly allocated funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias.

This priority takes precedence over other processing priority methods.

2. When the State did obligate its allocation in one or more of its housing programs during the previous 2 FYs, priority will be given to requests for assistance, in the affected program(s), from RHTSA funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

C. Colonias may access pooled RHTSA funds as provided in paragraph IV G of this exhibit.

IV. RHTSA

A. *Amount of Set Aside.* Set asides for RHTSA, from the current FY allocations, are established in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

B. *Selection of Targeted Counties*—1. *Eligibility.* Eligible counties met the following criteria: (1) 20 percent or more of the county population is at, or below, poverty level; (2) 10 percent or more of the occupied housing units are substandard; and (3) the average funds received on a per capita basis in the county, during the previous 5 FYs, were more than 40 percent below the State per capita average during the same period. Data from the most recent available Census was used for all three criteria, with criteria (2) and (3) based on the FmHA or its successor agency under Public Law 103-354 rural area definition.

2. *Selection.* The Act requires that 100 of the most underserved counties be initially targeted for RHTSA funds. In establishing the 100 counties, those with 28 percent or more of their population at, or below, poverty level and 13 percent or more of their occupied housing units substandard, have preference. If less than 100 counties meet this criteria, the remaining counties meeting the criteria in paragraph IV B 1 of this exhibit will be ranked, based upon a total of their substandard housing and poverty level percentages. The highest-ranking counties are then selected until the list reaches 100. The remaining counties are eligible for pool funds only.

C. *State RHTSA Levels.* In the section 502, 504, and 515 programs, each State's RHTSA level will be based on its number of eligible counties, with each county receiving a pro rata share of the total funds available. In order to ensure that a meaningful amount of assistance is available to each State, minimum funding levels may be established. When minimum levels are established, they are set forth on Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

D. *Use of Funds.* To maximize the assistance to targeted counties, allocated program funds should be used in addition to RHTSA funds, where possible. The State Director has the discretion to determine the most effective delivery of RHTSA funds among the targeted counties within his/her jurisdiction. The 100 counties listed in attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) are eligible for RHTSA funding consideration immediately. Colonias are also eligible for RHTSA funds as described in paragraph III of this exhibit.

E. *National Office RHTSA Reserve.* A limited National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular or RHTSA allocation. The amount of the reserve, and the date it can be accessed and any conditions thereof, if applicable, are contained in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

F. *Requests for Funds and RA.* All RHTSA funds are reserved in the National Office and requests for these funds and/or RA units must be submitted by the State Director, using the applicable format shown on attachment 4 or 5 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The State Director is responsible for notifying the Director of Single Family Housing Processing Division (SFHPD) or Multi-Family Housing Processing Division (MFHPD) of any RHTSA funds and RA units authorized, but not obligated, by RHTSA pooling date.

G. *Pooling.* Unused RHTSA funds and RA will be pooled. Pooling dates and any pertinent information thereof are available on attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Pooled funds will be available on a first-come, first-served basis to all eligible colonias and all counties listed on attachments 2 and 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Pooled RHTSA funds will remain available until the year-end pooling date.

H. [Reserved]

I. [Reserved]

J. *Requests for Assistance.* Requests for assistance in targeted counties must meet all loan making requirements of the applicable program Instructions, except as modified for colonias in paragraph III of this exhibit. For section 515, States may:

1. Issue Form AD-622, "Notice of Preapplication Review Action," up to 150 percent of the amount shown in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

2. All AD-622s issued for applicants in targeted counties will be annotated, in Item 7,

under "Other Remarks," with the following: "Issuance of this AD-622 is contingent upon receiving funds from the Rural Housing Targeting Set Aside (RHTSA). Should RHTSA funds be unavailable, or the county in which this project will be located is no longer considered a targeted county, this AD-622 will no longer be valid. In these cases, the request for assistance will need to compete with other preapplications in non-targeted counties, based upon its priority point score."

V. [Reserved]

[57 FR 3924, Feb. 3, 1992]

Subparts M–S [Reserved]

Subpart T—System for Delivery of Certain Rural Development Programs

SOURCE: 57 FR 11559, Apr. 6, 1992, unless otherwise noted.

§ 1940.951 General.

This subpart sets forth Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), as amended.

(a) If a State desires to participate in this pilot program, the Governor of the State may submit an application to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, room 219-A, Administration Building, Washington, DC 20250 in accordance with § 1940.954 of this subpart.

(b) The Under Secretary shall designate not more than five States in which to make rural economic development review panels applicable during any established time period for the purpose of reviewing and ranking applications submitted for funding under certain rural development programs. The following time periods have been established for participation in this pilot program:

First period—Balance of fiscal year (FY) 1992 to September 30, 1993;

Second period—October 1, 1993 to September 30, 1994;

Third period—October 1, 1994 to September 30, 1995; and

Fourth period—October 1, 1995 to September 30, 1996.

The State will be bound by the provisions of this pilot program only during the established time period(s) for which the State is designated. If a designated State does not remain an eligible State during the established time period(s) for which the State was designated, the State will not be eligible to participate in this program and cannot revert to the old ranking and applicant selection process.

(c) Assistance under each designated rural development program shall be provided to eligible designated States for qualified projects in accordance with this subpart.

(d) Federal statutes provide for extending FmHA or its successor agency under Public Law 103-354 financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

§ 1940.952 [Reserved]

§ 1940.953 Definitions.

For the purpose of this subpart:

Administrator. The Administrator of FmHA or its successor agency under Public Law 103-354.

Area plan. The long-range development plan developed for a local or regional area in a State.

Designated agency. An agency selected by the Governor of the State to provide the panel and the State Coordinator with support for the daily operation of the panel.

Designated rural development program. A program carried out under sections 304(b), 306(a), or subsections (a) through (f) and (h) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended, or under section 1323 of the Food Security Act of 1985, for which funds are available at any time during the FY under such section, including, but not limited to, the following: